

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Norfolk Division

TRINITY WALKER, #319873,

Petitioner,

v.

ACTION NO. 2:05CV669

GENE M. JOHNSON, Director,
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions on February 11, 2003, in the Circuit Court of the City of Portsmouth for possession of heroin with intent to distribute, and possession with intent to distribute heroin within 1,000 feet of school property, as a result of which he was sentenced to a total of ten years (with six years suspended) in the Virginia penal system.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. Report of the Magistrate Judge was filed on July 10, 2006, recommending dismissal of the petition. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On July 19, 2006, the Court received petitioner's objections to the Report and Recommendation.

The Court, having reviewed the record and examined the objections filed by the petitioner to the United States Magistrate Judge's Report, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report of the United States Magistrate Judge filed July 10, 2006. It is, therefore, ORDERED that the petition be DENIED and DISMISSED.

To the extent the petition is based on Grounds (a)(i) through (a)(iii), it is DENIED because these claims were never raised to the Virginia state courts and Walker has shown no cause for failing to present the claims and no prejudice resulting therefrom which this Court must find before considering the merits of the claims.

To the extent the petition is based on Ground (a)(iv), it is DENIED because the claim was previously adjudicated by the Virginia Supreme Court on the merits and based on the holding in Strickland and none of the statutory exceptions apply that would allow this Court to review the claim on the merits. It is further ORDERED that judgment be entered in favor of the respondent.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within 30 days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to all counsel of record.

/s/ Jerome B. Friedman

UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

August 23, 2006